
HOUSE BILL 3037

State of Washington

60th Legislature

2008 Regular Session

By Representatives Ahern, Halpern, Skinner, Kretz, Anderson, Warnick,
and McDonald

Read first time 01/21/08. Referred to Committee on Education.

1 AN ACT Relating to compensation for certificated employees in the
2 event of notice of probable cause for discharge; and amending RCW
3 28A.405.300 and 28A.405.310.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 28A.405.300 and 1990 c 33 s 395 are each amended to
6 read as follows:

7 In the event it is determined that there is probable cause or
8 causes for a teacher, principal, supervisor, superintendent, or other
9 certificated employee, holding a position as such with the school
10 district, hereinafter referred to as "employee", to be discharged or
11 otherwise adversely affected in his or her contract status, such
12 employee shall be notified in writing of that decision, which
13 notification shall specify the probable cause or causes for such
14 action. Such determinations of probable cause for certificated
15 employees, other than the superintendent, shall be made by the
16 superintendent. Such notices shall be served upon that employee
17 personally, or by certified or registered mail, or by leaving a copy of
18 the notice at the house of his or her usual abode with some person of
19 suitable age and discretion then resident therein. Every such employee

1 so notified, at his or her request made in writing and filed with the
2 president, chair of the board or secretary of the board of directors of
3 the district within ten days after receiving such notice, shall be
4 granted opportunity for a hearing pursuant to RCW 28A.405.310 to
5 determine whether or not there is sufficient cause or causes for his or
6 her discharge or other adverse action against his or her contract
7 status.

8 Upon service of a notification of probable cause or causes for
9 discharge, and until and unless the hearing officer's final decision is
10 in favor of the employee, the employee shall not continue to be paid or
11 compensated. If the employee requests a hearing to determine whether
12 or not there is sufficient cause or causes for the employee's
13 discharge, the district shall, pending a final decision of the hearing
14 officer, deposit into an escrow account money sufficient to compensate
15 the employee for back pay if the final decision is in favor of the
16 employee.

17 In the event any such notice or opportunity for hearing is not
18 timely given, or in the event cause for discharge or other adverse
19 action is not established by a preponderance of the evidence at the
20 hearing, such employee shall not be discharged or otherwise adversely
21 affected in his or her contract status for the causes stated in the
22 original notice for the duration of his or her contract.

23 If such employee does not request a hearing as provided herein,
24 such employee may be discharged or otherwise adversely affected as
25 provided in the notice served upon the employee.

26 Transfer to a subordinate certificated position as that procedure
27 is set forth in RCW 28A.405.230 shall not be construed as a discharge
28 or other adverse action against contract status for the purposes of
29 this section.

30 **Sec. 2.** RCW 28A.405.310 and 1990 c 33 s 396 are each amended to
31 read as follows:

32 (1) Any employee receiving a notice of probable cause for discharge
33 or adverse effect in contract status pursuant to RCW 28A.405.300, or
34 any employee, with the exception of provisional employees as defined in
35 RCW 28A.405.220, receiving a notice of probable cause for nonrenewal of
36 contract pursuant to RCW 28A.405.210, shall be granted the opportunity
37 for a hearing pursuant to this section.

1 (2) In any request for a hearing pursuant to RCW 28A.405.300 or
2 28A.405.210, the employee may request either an open or closed hearing.
3 The hearing shall be open or closed as requested by the employee, but
4 if the employee fails to make such a request, the hearing officer may
5 determine whether the hearing shall be open or closed.

6 (3) The employee may engage counsel who shall be entitled to
7 represent the employee at the prehearing conference held pursuant to
8 subsection (5) of this section and at all subsequent proceedings
9 pursuant to this section. At the hearing provided for by this section,
10 the employee may produce such witnesses as he or she may desire.

11 (4) In the event that an employee requests a hearing pursuant to
12 RCW 28A.405.300 or 28A.405.210, a hearing officer shall be appointed in
13 the following manner: Within fifteen days following the receipt of any
14 such request the board of directors of the district or its designee and
15 the employee or employee's designee shall each appoint one nominee.
16 The two nominees shall jointly appoint a hearing officer who shall be
17 a member in good standing of the Washington state bar association or a
18 person adhering to the arbitration standards established by the public
19 employment relations commission and listed on its current roster of
20 arbitrators. Should said nominees fail to agree as to who should be
21 appointed as the hearing officer, either the board of directors or the
22 employee, upon appropriate notice to the other party, may apply to the
23 presiding judge of the superior court for the county in which the
24 district is located for the appointment of such hearing officer,
25 whereupon such presiding judge shall have the duty to appoint a hearing
26 officer who shall, in the judgment of such presiding judge, be
27 qualified to fairly and impartially discharge his or her duties.
28 Nothing herein shall preclude the board of directors and the employee
29 from stipulating as to the identity of the hearing officer in which
30 event the foregoing procedures for the selection of the hearing officer
31 shall be inapplicable. The district shall pay all fees and expenses of
32 any hearing officer selected pursuant to this subsection.

33 (5) Within five days following the selection of a hearing officer
34 pursuant to subsection (4) of this section, the hearing officer shall
35 schedule a prehearing conference to be held within such five day
36 period, unless the board of directors and employee agree on another
37 date convenient with the hearing officer. The employee shall be given

1 written notice of the date, time, and place of such prehearing
2 conference at least three days prior to the date established for such
3 conference.

4 (6) The hearing officer shall preside at any prehearing conference
5 scheduled pursuant to subsection (5) of this section and in connection
6 therewith shall:

7 (a) Issue such subpoenas or subpoenas duces tecum as either party
8 may request at that time or thereafter; and

9 (b) Authorize the taking of prehearing depositions at the request
10 of either party at that time or thereafter; and

11 (c) Provide for such additional methods of discovery as may be
12 authorized by the civil rules applicable in the superior courts of the
13 state of Washington; and

14 (d) Establish the date for the commencement of the hearing, to be
15 within ten days following the date of the prehearing conference, unless
16 the employee requests a continuance, in which event the hearing officer
17 shall give due consideration to such request.

18 (7) The hearing officer shall preside at any hearing and in
19 connection therewith shall:

20 (a) Make rulings as to the admissibility of evidence pursuant to
21 the rules of evidence applicable in the superior court of the state of
22 Washington.

23 (b) Make other appropriate rulings of law and procedure.

24 (c) Within ten days following the conclusion of the hearing
25 transmit in writing to the board and to the employee, findings of fact
26 and conclusions of law and final decision. If the final decision is in
27 favor of the employee, the employee shall be:

28 (i) Restored to his or her employment position;

29 (ii) Compensated for back pay if any; and ((shall be))

30 (iii) Awarded reasonable attorneys' fees.

31 (8) Any final decision by the hearing officer to nonrenew the
32 employment contract of the employee, or to discharge the employee, or
33 to take other action adverse to the employee's contract status, as the
34 case may be, shall be based solely upon the cause or causes specified
35 in the notice of probable cause to the employee and shall be
36 established by a preponderance of the evidence at the hearing to be
37 sufficient cause or causes for such action.

1 (9) All subpoenas and prehearing discovery orders shall be
2 enforceable by and subject to the contempt and other equity powers of
3 the superior court of the county in which the school district is
4 located upon petition of any aggrieved party.

5 (10) A complete record shall be made of the hearing and all orders
6 and rulings of the hearing officer and school board.

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